

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EMPIRE FREEZERS OF SYRACUSE, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Corporation Franchise
Taxes under Article(s) 9A of the
Tax Law for the ~~Year(s) or Period(s)~~ Fiscal
Years Ending October 31, 1973 and 1974.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of May, 1978, she served the within
Notice of Decision by (certified) mail upon Empire Freezers of
Syracuse, Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Empire Freezers of Syracuse, Inc.
Box 770
Farrell Road
Syracuse, New York 13202
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~of the~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

3rd day of May, 1978

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EMPIRE FREEZERS OF SYRACUSE, INC. : AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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of Corporation Franchise :
Taxes under Article ~~xxx~~ 9A of the :
Tax Law for the ~~years xxxxxxxx~~ Fiscal :
Years Ending October 31, 1973 and 1974.

State of New York
County of Albany


John Huhn , being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of May , 1978, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Donald Aquilio, Esq.,
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Donald Aquilio, Esq.,
One Lincoln Center,
Syracuse, New York 13202.

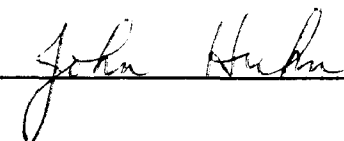
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(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

3rd day of May , 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

May 3, 1978

Empire Freezers of Syracuse, Inc.
Box 770
Farrell Road
Syracuse, New York 13202


Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **xx 1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Aloysius J. Nendza
Assistant Director

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, the State Office Building, 333 East Washington Street, Syracuse, New York, on July 18, 1977 at 1:15 P.M. Petitioner appeared by Donald Aquilio, Esq. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

Whether petitioner is entitled to the investment tax credit provided under section 210(12) (b) of the Tax Law, with respect to real and tangible personal property.

FINDINGS OF FACT

1. On April 15, 1974, the Corporation Tax Bureau issued a Statement of Tax Reduction or Overpayment, disallowing petitioner, Empire Freezers of Syracuse, Inc.'s claim for an investment tax credit against its corporation franchise tax for the fiscal year ending October 31, 1973. It did so on the grounds that the nature of petitioner's business activity did not qualify it for such credit under section 210(12) of the Tax Law. Accordingly, the Bureau allowed petitioner a net credit of only \$3,041.44 from petitioner's overpayment of corporation franchise tax for its fiscal year ending October 31, 1973.

2. On November 19, 1976, the Corporation Tax Bureau issued a Statement of Audit Adjustment, disallowing petitioner's claim for investment tax credit for petitioner's fiscal year ending October 31, 1974. In accordance with said Statement, a Notice of Deficiency was issued March 4, 1977 in the sum of \$15,101.45.

3. Petitioner, Empire Freezers of Syracuse, Inc., is a New York corporation with its principal place of business located at Farrell Road, Syracuse, New York, with a fiscal tax year ending on October 31st.

4. During the fiscal year ended October 31, 1973, petitioner, Empire Freezers of Syracuse, Inc., placed the following depreciable tangible property in service for use in its business activities in New York State:

<u>Description</u>	<u>Life</u>	<u>Cost</u>
(a) Pallets	3 years	\$ 34,138.00
(b) Fork lift trucks (8)	7 years	98,440.00
(c) Floor sweeper	10 years	1,761.00
(d) Pallet jacks and batteries	5 years	34,849.00
(e) Steel racks	20 years	113,041.00
(f) Miscellaneous equipment	5-10 years	6,696.00
(g) Cold storage plant (exclusive of administrative and leased portions)	5-33 years	<u>2,094,162.00</u>
	TOTAL COST	<u>\$2,383,087.00</u>

Items (a)-(f) were purchased during the fiscal year ending October 31, 1973. Construction of item (g) was completed during such fiscal year. All such property had a situs in Syracuse, New York, when placed in service.

5. During the fiscal year ended October 31, 1974, petitioner, Empire Freezers of Syracuse, Inc., placed the following depreciable tangible property in service for use in its business activities in New York State:

<u>Description</u>	<u>Life</u>	<u>Cost</u>
(a) Snow melting equipment	12 1/2 years	\$ 3,337.00
(b) Pallets	5 years	2,436.00
(c) Parking lot	5 years	10,812.00
(d) Building improvements	16 1/2 years	2,169.00
(e) Machinery & Equipment	5-10 years	7,568.00
(f) Machinery & Equipment	5 years	<u>602.00</u>
	TOTAL COST	<u>\$26,924.00</u>

6. Petitioner, Empire Freezers of Syracuse, Inc., timely filed its New York State Franchise Tax Report (Form CT-3) for the fiscal year ending October 31, 1973 and claimed an investment credit therein in the amount of \$5,251.00 pursuant to section 210(12) of the Tax Law.

7. Petitioner, Empire Freezers of Syracuse, Inc., timely filed its New York State Franchise Tax Report (Form CT-3) for the fiscal year ending October 31, 1974 and claimed an investment credit therein in the amount of \$12,638.00 pursuant to section 210(12) of the Tax Law.

8. During the years for which the credit was claimed, petitioner, Empire Freezers of Syracuse, Inc., was engaged in a variety of activities relative to the cold storage and distribution of customer products located at its Syracuse facilities. Exemplary of these activities were the following:

- (a) Raw food products, such as various types of vegetables, dairy products and meats, were stored at the petitioner's plant by several food processors. The Birdsey Division of General Foods was one such customer of the petitioner. As the raw products were needed for use by the customer, the goods would be removed from the freezer facilities and moved into processing facilities owned by the customer. The finished products were then returned to the petitioner's

facilities for cold storage until the customer required shipment of the finished goods to its customers. Storage of both raw products and finished goods at specific temperature levels was, and is, necessary to the proper processing and distribution of such food products.

- (b) The petitioner, Empire Freezers of Syracuse, Inc., also received finished goods from various customers in large shipments. As part of its distribution function to both local and national users of the products, petitioner would ship out smaller quantities of such goods in consolidated shipments that pooled a number of the products.

Although petitioner, Empire Freezers of Syracuse, Inc., provided the above-type of storage and distribution services relative to the processing and distribution of goods by its customers, it did not engage in other types of manufacturing and processing-related activities during the years in question.

CONCLUSIONS OF LAW

- A. That the investment credit encompassed in section 210(12) (b) of the Tax Law was intended by the legislature, through the use of the words "manufacturing" and "processing", to apply to enterprises engaged in manufacturing and analogous activities. As Governor Rockefeller stated in a memorandum accompanying his

approval of the bill that contained the investment tax credit at issue:

"The bill proposed by the Tax Structure Study Committee, makes two important changes (the second change not relevant here) affecting the business climate in New York State:

- (1) It will encourage the modernization of antiquated production facilities and make New York a more attractive location for manufacturers..." (emphasis added) (1969 McKinney's Session Laws of New York at p. 2576)

B. That petitioner, Empire Freezers of Syracuse, Inc., is not involved in the production of goods. Petitioner neither manufactures nor processes goods; it is merely involved in the cold storage and distribution of goods manufactured and processed by others. Therefore, petitioner is not an entity that may avail itself of the investment tax credit pursuant to section 210(12)(b) of the Tax Law. (Matter of Worcester Creameries Corporation, State Tax Commission, August 14, 1975).

C. That the investment by petitioner, Empire Freezers of Syracuse, Inc., in storage facilities and related equipment does not bring it within the purview of section 210(12)(b) of the Tax Law. The investment tax credit was primarily intended as a tax incentive designed to induce the location in New York of productive facilities and all other ancillary facilities used in the production

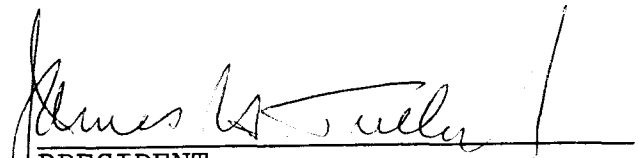
process, including storage facilities. To come within the afore-said section of the Tax Law, the storage facilities must be integrally related to the taxpayer's production enterprise. Petitioner's storage facilities are not integrally related to any production operation because petitioner's enterprise does not involve production.


D. That the activities of petitioner, Empire Freezers of Syracuse, Inc., do not constitute manufacturing, processing, or any other related activity. Thus, petitioner is not entitled to the investment tax credit within the meaning and intent of section 210(12)(b) of the Tax Law.

E. That the petitions of Empire Freezers of Syracuse, Inc. are denied. The disallowance by the Corporation Tax Bureau of petitioner's full claim for a refund or credit for the fiscal year ending October 31, 1973 is affirmed and the Notice of Deficiency issued March 4, 1977 is sustained.

DATED: Albany, New York
May 3, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER